

No. 83-1578

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

WESLEY MERRITT,

*Petitioner,*

v.

STATE OF GEORGIA,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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## QUESTIONS PRESENTED

1.

Whether this Court should grant a writ of certiorari to examine the lawful seizure of evidence pursuant to a valid state search warrant?

2.

Whether this Court should grant a writ of certiorari to examine the Petitioner's opportunity to litigate a motion to suppress where Petitioner had full opportunity to present evidence and the Supreme Court of Georgia correctly decided this issue not as a matter of due process but as a matter of state law?

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BRIEF IN OPPOSITION FOR THE RESPONDENT

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PART ONE

STATEMENT OF THE CASE

Petitioner Wesley Merritt was convicted, along with co-defendant Mirian Billings Ledesma, of conspiracy to sell cocaine in violation of the Georgia Controlled Substances Act. Petitioner's co-defendants Wesley

Freeman and Joseph Downing testified against Petitioner and Ledesma at trial.

Petitioner's convictions and sentences were affirmed by the Supreme Court of Georgia at Merritt v. State, 251 Ga. 885, \_\_\_\_ S.E.2d \_\_\_\_ (1984).

Petitioner now seeks a writ of certiorari from the affirmance of his convictions and sentences by the Supreme Court of Georgia.

Further facts may be developed herein as necessary for a more thorough illumination of the issues presented to this Court for resolution.

REASONS FOR NOT GRANTING THE WRIT

A. EVIDENCE PRESENTED  
AGAINST THE PETITIONER  
AT HIS TRIAL WAS  
LAWFULLY SEIZED PURSUANT  
TO A VALID SEARCH  
WARRANT.

Petitioner alleges that evidence presented against him at trial was unlawfully seized because police authorities exceeded the scope of search warrants issued against the Petitioner. Respondent submits that all evidence seized and introduced against the Petitioner was lawfully seized pursuant to valid search warrants and Petitioner presents no substantial federal issue herein for review by this Court.



In its review of the instant case, the Supreme Court of Georgia determined that evidence which had been seized pursuant to the challenged search warrants was properly seized under O.C.G.A. § 17-5-21; Ga. Code Ann. § 27-303. Merritt v. State, 251 Ga. 885, 890-891, \_\_\_ S.E.2d \_\_\_ (1984). (See Appendix A for text of statute). As said statute is fully in accord with the Fourth Amendment standards for search and seizure, the Supreme Court of Georgia properly concluded that no Fourth Amendment violation was presented in the instant case.

The Fourth Amendment guarantees a person's right against unreasonable searches and seizures and that no search warrant shall issue except

after a showing of probable cause, supported by an oath and affirmation, particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend IV. This requirement is designed to prevent general searches throughout a person's belongings. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971).

However, this Court has recognized that effective investigation of complex crimes may require the assembly of a "paper puzzle" from a large number of seemingly innocuous pieces of evidence. United States v. Wuagneux, 683 F.2d 1343, 1349 (11th Cir. 1982), citing, Andresen v. Maryland, 427 U.S. 463, 481 n. 10 (1976). "The complexity of an illegal scheme may not be used as a shield to

avoid detection when the State has demonstrated probable cause to believe that a crime has been committed and probable cause to believe that evidence of this crime is in the suspect's possession." Id., quoting, Andresen v. Maryland, supra. See also United States v. Jacob, 657 F.2d 49, 52 (4th Cir. 1981), cert. denied, 455 U.S. 942 (1982); United States v. Abrams, 615 F.2d 541, 548 (1st Cir. 1980) (Campbell, J. concurring). "It is universally recognized that the particularity requirement must be applied with a practical margin of flexibility, depending on the type of property to be seized, and that a description of property will be acceptable if it is as specific as the

circumstances and nature of the activity under investigation permit." Id.

In the instant case, warrants were issued for the search of Wes-Mer Chemical Co. in which the Petitioner and co-defendant Ledesma were corporate officers. Merritt at 886. The search of the chemical company disclosed substantial drug paraphernalia and numerous plastic bags containing cocaine residue. Id. In co-defendant Ledesma's desk, a drug testing apparatus and ledgers recounting drug transactions were also recovered. Id. Additionally, warrants were issued for the search for Merritt Realty. Id. at 890. During this search a ledger reciting drug transactions, two desk calendars

recounting drug transactions and the name of a drug courier were found. Id. Additionally, a business license of Wes-Mer Chemical Co. and an employment contract between a third party and Wes-Mer Chemical Co. were found during the search. Id. Both the business license and the contract showed that Petitioner was a corporate officer in Wes-Mer Chemical Co. where the drugs and drug paraphernalia had been previously discovered. Id.

Petitioner now challenges the search of Merritt Realty, claiming that the search was beyond the scope authorized by the warrants. However, the Supreme Court of Georgia determined that the seizure of said papers at Merritt Realty did not violate O.C.G.A. § 17-5-21; Ga. Code

Ann. § 27-303, which does not preclude the seizure of private papers not listed in the warrant where those papers are the instrumentalities of a crime and the search is otherwise valid. Merritt at 890-891. The Supreme Court of Georgia also properly determined that the Fourth Amendment does not preclude the seizure of private papers under these circumstances. Id. Finally, the documents were determined not to have been private papers and no violation of either Georgia or federal law was found by the Supreme Court of Georgia. Id. at 890-891.

As the Supreme Court of Georgia was correct in its determination regarding these materials, its

decision does not present any issue for review by this Court.

Petitioner also attempts to challenge the constitutionality of O.C.G.A. § 16-14-7(f); Ga. Code Ann. § 26-3405, known as the Georgia Racketeer Influenced and Corrupt Organizations Act (RICO). (See Appendix B). However, as the Supreme Court of Georgia noted, it was conceded that these papers could be properly seized under the Georgia RICO statute. Merritt at 891. Therefore, the Supreme Court of Georgia did not specifically address the applicability of the Georgia RICO statute to the instant case, but instead dismissed the Petitioner's claims regarding the constitutionality of the statute in dicta, referring to its decision in

Waller v. State, 251 Ga. 124, 303 S.E.2d 437 (1983), cert. granted, \_\_\_ U.S. \_\_\_ (Case Nos. 83-321; 83-322 Nov. 7, 1983).

While Waller dealt with specific prosecutions under the Georgia RICO statute, involving extensive searches and seizures, the instant case deals solely with violations of the Georgia Controlled Substances Act, not prosecuted under the RICO statute, and limited searches related solely to the drug investigation

Therefore, Respondent asserts that the Supreme Court of Georgia determined the validity of the searches challenged herein under an adequate and independent state ground by interpreting O.C.G.A. § 17-5-21; Ga. Code Ann. § 27-303. In accord



with this statutory provision, the Supreme Court of Georgia also determined that no Fourth Amendment violations were presented by the Petitioner's claims.

Respondent also asserts that the instant case is an inappropriate case for consideration of the constitutionality of the Georgia RICO statute since said statute was not part of the prosecution of the Petitioner, nor was it the basis of the searches involved. The Georgia RICO statute was addressed solely in answer to one of the Petitioner's contentions on direct appeal, and dealt with by the Supreme Court of Georgia only indirectly. The instant case is not similar and does not present the same issues as Waller,

wherein this Court has granted certiorari to review two issues, one of which is the Georgia RICO statute.

For all the above and foregoing reasons, Respondent respectfully submits that the Supreme Court of Georgia was correct in its interpretation of the Petitioner's constitutional rights and that the Petitioner's allegations presented herein do not raise any issue for review by this Court.

B. THE SUPREME COURT OF  
GEORGIA DID NOT  
SPECIFICALLY ADDRESS THE  
ISSUE OF WHETHER OR NOT  
THE PETITIONER HAD BEEN  
AFFORDED A FULL AND FAIR  
OPPORTUNITY TO LITIGATE  
HIS MOTION TO SUPPRESS.

Petitioner contends that he was denied due process of law in that he was not permitted a full and fair opportunity to litigate his claims regarding the motions to suppress evidence in the trial court. Respondent submits that this specific issue was not addressed by the Supreme Court of Georgia on direct appeal and presents no substantial issue of federal or constitutional law for this Court to review.

It is a well-established principle of law that this Court will not decide federal constitutional issues raised for the first time on review of state court decisions. Cardinale v. Louisiana, 394 U.S. 437, 438 (1969). Such questions not raised below are very likely to have an inadequate record, since it was certainly not compiled with those questions in mind and in the federal system it is very important that the state courts be given the first opportunity to consider the application of state statutes in light of any constitutional challenge. Id. at 439.

In the instant case, Petitioner claims he was denied a full and fair opportunity to litigate the issues of his motion to suppress. The Supreme

Court of Georgia, in its review of this issue, noted that:

Prior to the trial of this case Ledesma renewed her motion to suppress the evidence seized as a result of the September 14 arrest. The trial court declined to put the State to its proof a second time, but permitted appellants the opportunity to call witnesses or otherwise offer evidence which would raise issues different from those raised in the first

motion to suppress.

Appellants declined to  
do so. We find no error.

Merritt at 888.

Respondent asserts that the Supreme Court of Georgia was addressing the propriety of the trial court's procedural ruling of how to deal with the motion to suppress. The Supreme Court of Georgia did not address any due process implications of the trial court's ruling, and therefore, Respondent avers that said issue is inappropriately developed for presentation to this Court.

Respondent notes that the search challenged herein was found proper and a motion to suppress evidence discovered during the challenged search was deemed properly denied in a

review of said search by the Supreme Court of Georgia. See Ledesma v. State, 251 Ga. 487, 306 S.E.2d 629 (1983), cert. denied, \_\_\_ U.S. \_\_\_ (Case No. 83-755, decided Jan. 16, 1984). In the instant case, Petitioner was given full opportunity to supplement the information presented previously regarding this search, but the Petitioner declined this opportunity. Merritt at 888. Petitioner had full opportunity to call any witnesses or present any new evidence which would raise any issues different from those raised in the prior case. Id.

Respondent asserts that because of this opportunity to fully and fairly litigate any new issues regarding the motion to suppress, Petitioner was not

denied due process of law nor was his trial rendered fundamentally unfair.

Therefore, for all the above and foregoing reasons, Respondent asserts that Petitioner has failed to present any substantive issue of federal law which would warrant review by this Court.

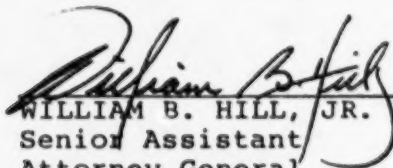
#### CONCLUSION

This Court should refuse to grant a writ of certiorari to the Supreme Court of Georgia, as it is manifest that there exists no federal question for review by this Court as to the Petitioner's claims, and further, there is no substantial federal question not previously decided by this Court. Additionally, the decision sought to be reviewed is



demonstrably in accord with the  
applicable decisions of this Court.

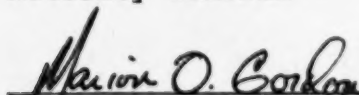
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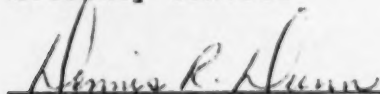


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CERTIFICATE OF SERVICE

I, William B. Hill, Jr., Attorney of Record for the Respondent and a member of the Bar of the Supreme Court of the United States certify that in accordance with the rules of the Supreme Court of the United States I have this day served a true and correct copy of this Brief for the Respondent in Opposition upon the Petitioner's attorney by depositing a copy of this brief in the United States mail with proper address and adequate postage to:

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This 20<sup>th</sup> day of April, 1984.

  
WILLIAM B. HILL, JR.

## APPENDICES

### APPENDIX A

O.C.G.A. § 17-5-21. Grounds for issuance of search warrant; scope of search pursuant to search warrant.

- (a) Upon the written complaint of any officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws under oath or affirmation, which states facts sufficient to show probable cause that a crime is being committed or has been committed and which particularly describes the place or person, or both, to be searched and things to be seized, any judicial officer authorized to hold a court of inquiry to examine

into an arrest of an offender  
against the penal laws,  
herein referred to as  
"judicial officer," may issue  
a search warrant for the  
seizure of the following:

- (1) Any instrument, articles, or  
things, including the private  
papers of any person, which  
are designed, intended for  
use, or which have been used  
in the commission of the  
offense in connection with  
which the warrant is issued;
- (2) Any person who has been  
kidnapped in violation of the  
laws of this state, who has  
been kidnapped in another  
jurisdiction and is now  
concealed within this state,

or any human fetus or human  
corpse;

(3) Stolen or embezzled property;

(4) Any item, substance, object,  
thing, or matter, the  
possession of which is  
unlawful; or

(5) Any item, substance, object,  
thing, or matter, other than  
the private papers of any  
person, which is tangible  
evidence of the commission of  
the crime for which probable  
cause is shown.

(b) When the peace officer is in the  
process of effecting a lawful  
search, nothing in this Code  
section shall be construed to  
preclude him from discovering or

seizing any stolen or embezzled property, any item, substance, object, thing, or matter, the possession of which is unlawful, or any item, substances, object, thing, or matter, other than the private papers of any person, which is tangible evidence of the commission of a crime against the laws of this state.

APPENDIX B

O.C.G.A. § 16-14-7. Civil  
Remedies-Forfeiture.

- (f) Seizure may be effected by a law enforcement officer authorized to enforce [sic] the penal laws of this state prior to the filing of the complaint and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within ten days of the date of seizure, the seizure shall be reported by the officer to the district attorney of the circuit in which



the seizure is effected; and the district attorney shall, within a reasonable time after receiving notice of seizure, file a complaint for forfeiture. The complaint shall state, in addition to the information required in subsection (e) of this Code section, the date and place of seizure.